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IN THE

SUPREME COURT

OF THE

United States

On Writ of Error from the Supreme Court of the State of California.

C. S. Thompson et al.,
Plaintiffs in Error,

vs.

The Los Angeles Farming and Milling Company,
Defendant in Error.

This is an action in which the Los Angeles Farming and Milling Company, a corporation, seeks to recover a large tract, of land consisting of a part of the ex-Mission of San Fernando, situated in the county of Los Angeles, state of California, basing its original claim of title upon an alleged Mexican grant, claimed to have been made by Pio Pico, governor of California, to one Eulogio de Celis, under whom said corporation claims title. Said alleged grant bears date June 17, 1846. The case was tried by a jury.

On the trial in the trial court, said corporation plaintiff in said court, in support of its claim of title, introduced in evidence a document which on its face purported to be a United States patent, conveying to said de Celis said ex-Mission lands,

embracing, as it was claimed, the premises in controversy, and also introduced certain *mesne* conveyances connecting said corporation plaintiff with said title.

After said corporation plaintiff had rested its case, the defendants (now plaintiffs in error) offered in evidence the petition of said Eulogio de Celis, presented to the board of United States land commissioners authorized to ascertain and settle private land claims in California, which said petition will be found at pages 233-4 of the record; and also offered in evidence the said alleged grant. [See page 235 record.] Also offered in evidence the decision of confirmation by the board [see record pages 238-9] for the purpose of proving that said claim of said de Celis was not "*a claim to lands in California by virtue of any rights or title derived from the Spanish or Mexican governments;*" and that therefore the said board of land commissioners had no jurisdiction over the case presented by said petition. But to the introduction of each of said documents, opposing counsel, representing said corporation plaintiff, objected on the ground that said documents and each of them were incompetent, irrelevant and immaterial as evidence in the case. The court held that the patent was conclusive and sustained said objections to each of said documents, to which ruling of the court the defendants excepted; and on appeal to the Supreme Court of the state of California the said action of the court below was by said Supreme Court sustained; and from said last named court said case comes to this court on writ of error, granted by the chief justice of said state.

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Assignment of Errors.

Plaintiffs in error assign the following as errors, for which a reversal of the decision of the California state Supreme Court is asked, to wit:

I.

The court erred in holding that the patent from the United States to Eulogio de Celis, dated January 8, 1873, was conclusive of the case, and cut off defendants in the trial court from introducing testimony to show its invalidity.

II.

The court erred in refusing to allow defendants in the trial court to introduce the petition of said de Celis before the board of land commissioners for the confirmation of his claim to the land, together with copies of the grant from Governor Pico to him, and the decision of confirmation by the board.

III.

The court erred in refusing to allow defendants to prove by said petition and by said alleged grant that de Celis did not claim said lands, or any part thereof, by virtue of any right or title derived from the Spanish or Mexican government. Said petition, grant and decision of the board being substantially as follows, to wit:

Petition.

"Before the commissioners to ascertain and settle private land claims in the state of California.

"Eulogio de Celis gives notice that he claims a tract of land situated in the present county of Los Angeles, known by the name of Mission of San Fernando, bounded as follows: On the north by the rancho of San Francisco, on the west by the mountains of Santa Susanna, on the east by the rancho of Miguel Triumfo, and on the south by the mountains of Portesuelo, which tract is supposed to contain fourteen square leagues.

"Said land was sold to said Celis by a deed of grant dated the seventeenth day of June of the year eighteen hundred and forty-six, by Pio Pico, constitutional governor of the Californias thereto, duly authorized by the supreme government of the nation and by a decree of the departmental assembly of April third, eighteen hundred and forty-six; said sale was made for the sum of fourteen thousand dollars, which was paid by the said Celis to the said Pio Pico, who acknowledged the receipt thereof, as will more fully appear by reference to the aforesaid deed of grant, copy whereof marked A is hereto annexed.

"Claimant avers that the aforesaid deed of sale contains the condition that the government of Mexico shall have the right to annul the contract by reimbursing to this claimant the aforesaid sum of fourteen thousand dollars, with the current rates of interest, and in case said sum is not reimbursed within said eight months, said Mission of San Fernando shall be his in full property. And this claimant avers that said sum of fourteen thousand dollars was never reimbursed to him by the Mexican government, or by any person whatsoever.

"Said Mission of San Fernando was leased by the government of Mexico to Andres Pico in December, 1845, for term of ———years, which lessee has been in the occupancy of the said property up to the present date.

"Claimant further avers that he knows of no other claim to the aforesaid mission, and he relies on the documents above referred to and witnesses he shall produce to substantiate his claim.

N. HUBART,

"Attorney for Caimant."

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Grant.

"The undersigned constitutional governor of the department of the Californias, in virtue of the powers vested unto him by the supreme government of the nation, and in virtue of a decree of the honorable departmental assembly of April third of the present year, to raise means for the purpose of maintaining the integrity of the territory of this department. For the sum of fourteen thousand dollars, which he receives, sells unto Don Eulogio de Celis and his heirs, ex-Mission of San Fernando with all *its* properties, estates, lands and movables with the exception of the church and all its appurtenances which remains for public use. Said purchaser obligating himself to maintain on their lands the old Indians on the premises during their lifetime with the right to make their crops, with the only condition that they shall not have the right to sell the lands they cultivate and any other which they possess without anterior title from the departmental government, for all of wh[illegible]he aforesaid Senor Celis shall be acknowledged as the legitimate owner of the aforesaid ex-Mission of San Fernando, to use the same as to him shall seem best, guaranteeing unto him as this government does guarantee, that he is well possessed of the aforesaid estate with all the prerogatives granted by law to purchasers, with the only condition that the above mentioned purchaser shall not take possession within the space of eight months from the date hereof, within which delay the government shall have the right to annul this contract by reimbursing to the aforesaid Senor Celis the sum of fourteen thousand dollars with interest at the current commercial rates, but if this reimbursement is not operated within the aforesaid eight months, this sale shall be valid.

"The above mentioned purchaser binds himself to warrant to the father minister of the aforesaid establishment his subsistence and clothing with all possible decency, together with the rooms assigned to him or those which he justly requires.

"And for the establishment of this fact and the security of the purchaser, the present document is issued and shall be acknowledged and respected by all the authorities of the department for its better accomplishment.

"And in faith of which the undersigned and secretary of the department grant their authority and affix their signatures in the city of Los Angeles on this ordinary paper for want of stamped paper, the seventeenth of June, one thousand eight hundred and forty-six. PIO PICO.

"JOSE MATIAS MORENO,

"*Secretary pro tem.*"

Decision.

"Eulogio de Celis *v.* The United States.

"For the ex-Mission of San Fernando in the county of Los Angeles containing about thirteen square leagues.

"This claim is based upon a grant issued to the claimant by Governor Pio Pico on the 17th day of June, 1846.

"The grant purports to have been made in consideration of the payment of the sum of fourteen thousand dollars in money. Pio Pico testifies that he executed the grant at the date that the same bears, and that it was made under special instructions of his government for the purpose of raising the necessary funds to enable the department to prepare for a defense against the attack of the Americans and that the sum of fourteen thousand dollars was actually received by him from the grantee in consideration thereof and that the funds were used by him for the benefit of the nation in the defense of the same. The genuinness of the grant is clearly established and the circumstances under which it was made so clearly explained as to leave no doubt but it was done in good faith.

The grant contains a clause reserving the right of the government to annull the same at any time within eight months from the date thereof by refunding to the grantee the consideration money, together with the usual rate of interest thereon, which rate, if the transaction had been between individuals changed the nature of the grant to that of a mortgage. But to apply the doctrine in this case would be in effect to compel the grantee to remain a mortgagee without power to foreclose the mortgage against the government, in as much as the government stands upon its sovereignty not acknowledging the rights of individuals to have their actions at law against it, only in cases where provisions are made by special statute.

We think the petitioner *in* this case is entitled to a confirmation and a decree will be entered accordingly.

(Confirmed.)

(Endorsed.) No. 378. Eulogio de Celis, ex-Mission of San Fernando. Opinion of the board delivered by commissioner S. B. Farwell. Filed in office July 3rd, 1855, Geo. Fisher, Secretary. Recorded in record of decisions Vol. 3, page 102. Geo. Fisher, Secy." For full copies of these documents, see record, page 233 and following.

IV.

The court also erred in affirming the action of the trial court in instructing the jury as follows:

"The court instructs you to render a verdict in the above entitled action in favor of the plaintiff, the Los Angeles Farming and Milling Company, and against the following named defendants, to wit: Joseph Mazet, F. M. Culp, R. J. Tarbell, I. B. Cox, Rose D. Mosher, Henry C. Vincent, John J. Shore, and Edwin C. Carter, for the possession of the premises described in the complaint.

WALTER VAN DYKE, *Judge.*

April 6th, 1895.

v.

The court erred in rendering a judgment of affirmance of the judgment of the trial court in favor of plaintiff, when it should have rendered a judgment of reversal in favor of defendants in said court. Plaintiffs in error contend;

First. That this sale or alleged grant is absolutely void, for the want of power in the governor to make it; and secondly; that, because of the fact that the void nature of the grant was set out and appeared on the face of the claimant's petition asking for its confirmation by the board of land commissioners; in other words; because the claimant's petition revealed facts which showed that he did not claim the lands asked for, "by *virtue of any right or title derived from the Spanish or Mexican government,*" said petition thus showed on its face that petitioner's claim was one, over which the board had no jurisdiction.

Section 8 of the act of Congress of 1851, creating said board of land commissioners, and fixing and limiting its jurisdiction, provides:

"That each and every person claiming lands in California "*by virtue of any right or title derived from the Spanish or Mexi-*"*can government, (italics mine)* shall present the same to said commissioners when sitting as a board, together with such documentary evidence and testimony of witnesses as the said claimant relies upon in support of such claim; and it shall be the duty of the commissioners when the case is ready for hearing, to proceed promptly to examine the same upon such evidence and upon the evidence produced in behalf of the United States, and to decideupon the validity of the said claims."

In the case of Beard *v.* Federy (reported in 3rd Wallace p. 479,) this honorable court placed a judicial construction upon that portion of the above quoted section of the act, creating said board, which fixes its jurisdiction, and limits it to claims, which show "*a right or title derived from the Spanish or Mexican government.*" In that case, it is true, that this court sustained

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the jurisdiction of the board, but it only did so for the reason that the claimant's petition—as the court holds—*did show a right or title derived from the Spanish or Mexican government.*

In the case just cited, after carefully considering the allegation of the claimants petition, asking for the confirmation of his claim, this court said:

"These averments clearly present a case within the juris-"diction of the board of commissioners. They show a claim by "virtue of a right or title derived from the Spanish or Mexican "government, which is all that is required by the act of 1851."

But if in the said case, of Beard *v.* Federy, this court had been confronted with such a petition as that of de Celis, namely, a petition which—as we shall presently prove—according to the repeated decisions of this court—showed *no "right or title derived from the Spanish or Mexican government,"* the court would necessarily have been compelled to hold that the board had *no* jurisdiction over the claim presented, and therefore, that its decree of confirmation was a mere nullity, and utterly void.

But am I correct in asserting that according to the decisions of this court, the allegations of facts set out in the petition of Eulogio de Celis, asking for the confirmation of his claim, failed to show *"any right or title derived from the Spanish or Mexican government?"*

In the case of the United States *v.* Vallejo, I. Black 541, in passing upon an attempted sale of land by Governor Pico, made about the same time and for the same alleged purpose of raising money to defend the country against the American forces, this court said:

"The main objection to this grant is the want of power in the governor to make it." And after thoroughly considering and discussing the question, this court holds that Governor Pico had no power to sell the public lands of Mexico; and on that ground decided that Vallejo had no right or title to the lands he claimed.

Then again, in the case of the United States *v.* Workman, 1 Wallace p. 745, this court said:

"The governor of California had no power on the 8th day of June, 1846, either under the colonization laws of August 12, and the regulations of November 1, 1828, nor yet under the dispatch of March 10, 1846, from the minister of war; nor under the proclamation of Mariano Paredes Y. Sprillago, president *ad interim* of the Mexican republic, dated March 13, 1846—these two last being made in anticipation of the invasion of California by the forces of the United States; nor under any other authority, to make a valid sale and grant of the Mission of San Gabriel in California."

If, then, Governor Pico had no power to sell the public lands to Vallejo, and no power to sell the San Gabriel Mission lands to Workman, whence did he derive his power to sell the San Fernando Mission lands to de Celis? Upon the authority of these two decisions last cited there would seem to be no escape from the conclusion that this sale by Pio Pico to de Celis constituted no claim *"by virtue of a right or title derived from the Spanish or Mexican government,"* and was as utterly void as if it had been made by the king of Dahoma or the emperor of China.

And yet, void as it was, it must be frankly conceded that if the board of land commissioners had *jurisdiction* over the case, its decision confirming the claim cannot now be assailed by these defendants.

Hence, if de Celis in his petition had even falsely alleged facts sufficient to show a *title derived from the Spanish or Mexican government*, his decree of confirmation and his patent would now stand beyond the reach of successful attack on the ground above specified.

" *The subject matter of jurisdiction is to be found in the alle-*
" *gations of the litigants, and not to be ascertained outside of them.*
" *If the complaint filed presents a case entitling the plaintiff to the*

"*action of the court, then there is a subject matter, though no evi-*
"*dence can be adduced to support any of the allegations in the com-*
"*plaint.*"

17 American State Reports 143.

It is true that the United States District Court on appeal affirmed the decision of the board of commissioners in this case, but it is settled law that where a lower tribunal has no jurisdiction "it necessarily follows that the appellate court could not "acquire any by appeal."

See Levy *v.* Shurman, 42 American Decisions 692.

Neither could the issuance of a United States patent, based on a void decree of confirmation, have any more validity than the void decree upon which it rested for its foundation.

"*Judgments rendered without jurisdiction are void.*"

13 American State Reports 220;

11 American State Reports 808, and numerous authorities there cited.

And "*all proceedings based on a void judgment are absolutely* "*void, irrespective of bona fides.*"

See Great American Mining Co. *v.* Woodman etc. Mining Co., 12 Colorado 46;

Also, 13 American State Reports 204.

In fact these principles seem so elementary that it almost looks like a contempt of court to cite authorities in their support.

The legal propositions, upon which we rely for the reversal of the decision of the California Supreme Court, seem so self evident when considered in the light of the decisions of this court in the two cases above cited (namely, the Vallejo case and the Workman case) that argument would seem hardly necessary. And I should probably have curtailed this brief to one half its length but for the fact—judging from the nature of the opinion delivered by the California Supreme Court in this case—that I had failed to make myself understood by the learned author of that

opinion. My position in that court—just as it is in this—was that the decree confirming the de Celis claim was *absolutely void* and an *utter nullity* for want of jurisdiction. And in order to maintain that position it was necessary to establish two propositions, namely: *First*, that the alleged grant by Pio Pico to de Celic was *void;* and *secondly*, that the *facts* showing the void character of that so-called grant appeared in the *petition* asking for its confirmation. In order to establish the first of these propositions we cited the said cases of Vallejo *v.* The United States and Workman *v.* United States, holding that the California governor had no power to sell these lands, and that his sales were mere nullities.

Now, one of the errors that we complain of is that the trial court refused to allow us to prove by the introduction of the grant itself that it *was a void grant;* and another error is, the refusing to allow us to prove, by the introduction of the petition of de Celis asking for confirmation of his alleged grant, that said petition showed on its face the void character of his grant; and that it showed no right or title derived from the Spanish or Mexican government, and consequently showed no jurisdiction in the board to try the case.

As an evidence of the fact that we utterly failed to make our real position understood by the learned judge who prepared the decision of the California Supreme Court in this case, attention is called to the following quotation from that decision, where the court says:

"Appellants cite the cases of United States *v.* Vallejo, 1 " Black 541, and United States *v.* Workman, 1 Wallace 745.

" These were cases, however, in which appeals were taken " by the United States directly from the decree of confirmation, " and were direct attacks upon the validity of the judgments " appealed from; whereas the evidence offered in the present " case is for the purpose of a collateral attack upon the validity " of the decree of confirmation."

Now our citation of the said cases of United States *v.* Vallejo and United States *v.* Workman were not cited for the purpose of showing in *themselves* that we had a right to attack collatterally a *judgment* that *was* a *judgment*, but for the purpose of showing, in *connection with the de Celis petition*, that the de Celis claim was one over which the board had no jurisdiction, and consequently that its so-called judgment was *not* a *judgment* but a *nullity*. And if a *nullity* it was open to attack collaterally. A void thing is nothing.

In the case of Doolan *v.* Carr, reported in 125 U. S. p. 618, this court held:

"That it is a clear distinction established by law, and it has "been often asserted by this court, that even a patent from the "government of the United States, issued with all the forms of "law, may be shown to be void by extrinsic evidence, if it be "such evidence as by its nature is capable of showing a want of "authority for its issue."

Again (same case):

"Where a court has jurisdiction, it has a right to decide "every question which occurs in the cause; and whether its "decision be correct or otherwise, its judgment, until reversed, "is regarded as binding in every other court. But if it act "without authority, its judgment and orders are regarded as "nullities. They are not *voidable*, but simply *void*."

And in support of this position the court cites an overwhelming array of authorities.

The California Supreme Court, in deciding this case, cites in support of its decision the above quoted case of Beard *v.* Federy, in which this court, when referring to the claimant's petition for confirmation of his grant, said:

"These averments clearly present a case within the juris- "diction of the board of commissioners. They show a claim by "virtue of a right or title derived from the Spanish or Mexican "government, which is all that is required by the act of 1851."

But while it is true that in the case of Beard *v.* Federy the claimant's petition did undoubtedly, in the language of this court, "present a case within the jurisdiction of the board by *showing* "*a claim by virtue of a right or title derived from the Spanish or* "*Mexican government,*" how is it possible for that decision to be used as authority to sustain the jurisdiction of the board in a totally different sort of case, like the one at bar, where, as the court will see, the averments of the claimant's petition, instead of showing "*a right or* "*title derived from the Spanish or Mexican government,*" show just exactly the contrary?

In deciding this case the state court quotes that part of this court's decision in the Beard *v.* Federy case, which says:

"The board *having acquired jurisdiction*, the validity of the "claim presented and whether it was entitled to confirmation, "were matters for it to determine, and its decision, however "erroneous, cannot be collaterally assailed on the ground that "it was rendered on insufficient evidence."

Undoubtedly such is the law, but the mere fact that Mr. Justice Harrison cites this law in answer to our contention only proves that we failed to make our contention understood. To repeat: We fully concede, and have always conceded for the purposes of this case, that *if* the board of land commissioners had jurisdiction over the subject matter of the de Celis claim, its decree of confirmation cannot be collaterally attacked. But we maintain, just as this court held in the said case of Beard *v.* Federy, that in order to give said board jurisdiction the "averments of the claimant's petition," in the language of the act creating said board, and in the language of this court in said Beard *v.* Federy case, must show:

"A claim by virtue of a right or title derived from the Spanish or Mexican government."

And we reasserverate our contention that the petition of the claimant, de Celis, not only fails to show "*a claim by virtue of a right or title derived from the Spanish government,*" but sets out a

state of facts which, in the light of at last two decisions of this court, conclusively show that his claim was *not by virtue of any right or title derived from the Spanish or Mexican government*" because as above stated, it shows, as the basis and the only basis of the claim, a pretended sale by Governor Pico, such as this court has said the governor had no power to make.

As further proof that we must have failed to make our contention understood by the California Supreme Court in this case is the fact that in its decision the court cites as authority against us the case of More *v.* Steinback, 127 U. S. 70.

The difference between the question decided in the More *v.* Steinback case, and the question now under consideration is just exactly the difference between the erroneous decision of a court acting *with* jurisdiction and the erroneous decision of a court acting *without* jurisdiction. A careful study of the More *v.* Steinback case and of the elaborate brief of appellant's counsel will show that the question of the jurisdiction of the land commissioners was not in that case either raised by counsel or decided by the court. It is true that in the case just named it was contended by appellant's counsel that the sale of certain lands by Governor Pico to one Poli was void for the want of power to make the grant or sale, and on that ground he contended that the patent based thereon should be rejected. But in *that case*, no proof was either given or offered in the trial court, to show a want of jurisdiction in the board. And this court, assuming the jurisdiction of the board of land commissioners to confirm the claim (as it might well do in the absence of any showing to the contrary), said:

"But it does not follow that there were not exceptional cir-
"cumstances with reference to the sale to Poli which authorized
"the governor to make it (the grant). We are bound to suppose
"that such was the case *in the absence of any evidence* to the contrary," etc. And the court adds:

"The question of its validity was thereby forever closed "except as against those who might be able to show a prior and "better right to the premises."

And taking for granted—as it had to do—the jurisdiction of the board of commissioners that confirmed the Poli claim the court could reach no other conclusion. But the very thing which this court was compelled to assume in the case of the Poli claim (namely, the jurisdiction of the land commissioners,) for the want of *evidence to the contrary*; is the thing which in this case we offered to prove in thecourt below *did not exist:* but we were denied that privilege, and this denial we insist was error.

There is in fact, a double reason why this particular grant was void. First, it was void because it was an attempted sale; and secondly, it was void because it was an attempt to alienate mission lands, which under the Mexican law the governor had no power to do. And furthermore, the act of Congress creating the board of land commissioners gave that board no jurisdiction over mission lands except for one specific purpose. Congress being fully advised as to the Mexican law, denying the governor the power to grant mission lands provided by section 16 of the act creating said board.

"That it shall be the duty of the commissioners herein provided for to ascertain and report to the secretary of the interior the tenure by which the mission lands are held; and those held by civilized Indians, and those who are engaged in agriculture or labor of any kind, and also those which are occupied and cultivated by pueblos or rancheros Indians."

Here is a specific and clearly defined and limited duty, pointed out to the board by the very law of its creation with reference to these mission lands. Congress knowing that they had not been and could not under the Mexican law be granted, and knowing too that the civilized Indians were occupants and cultivators of these mission lands, evidently intended to treat at least that much of California's domain as government property,

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subject to certain rights of the occupants. Hence it was that the whole matter was relegated to the secretary of the interior, who, under the law, was and still is charged with the duty of supervising and managing and protecting the public domain.

Undoubtedly the reason for requiring the board to "ascertain and report to the secretary the tenure by which the mission lands were held" was to enable him to deal justly with the occupants, and to recommend such legislation as might be deemed necessary for the protection of these Indians, the tenants and wards of the government.

In thus prescribing by law the action that the commissioners should take with reference to mission lands—under the universally recognized maxim, "*Expressio unius exclusio alterius*"—the board was as effectually prohibited from taking any other action with reference to these mission lands as if Congress had in terms forbidden it to do so.

Viewing the matter as we do it seems to us that (if we are correct in our position that in confirming the de Celis claim the land commissioners acted without jurisdiction) the demoralizing results of a final decision of our highest court giving sanction to such an unauthorized, illegal and void act, involving as it does the title to millions of dollars' worth of property would tend not a little to imperil that high respect and abiding confidence that a law-loving people ought to be able to repose in their supreme judiciary.

The great and paramount objection to a mob court is that even when it decides justly it acts without jurisdiction.

But is it not still worse, and far more demoralizing, for a legally organized court, such as the U. S. board of land commissioners to try and decide an important case without jurisdiction and against the law?

And can it be in the interest of law and good government for these lawless and unjurisdictional acts to be now sustained by the courts?

The law should certainly deal out even handed justice to the great and small, the rich and the poor alike; and hence while the government, with commendable zeal, through its land department and its courts, takes special care, that no individual homestead settler shall take from the public domain so much as a 10-acre tract of land in violation of law; it would indeed look like a travesty on justice to allow a wealthy corporation in defiance of law to hold so magnificient a tract of government land as that involved in this suit.

There are other reasons why plaintiffs in error think the decision of the Supreme Court of California ought to be reversed, which reasons will be more fully and ably presented by the Washington city counsel with whom I am associated.*

Z. MONTGOMERY,

One of the Counsel for Plaintiffs in Error.

*Although I conducted this suit in the Supreme Court of California, and procured the writ of error, it was not until a very late date that I was retained to assist in its presentation in the United States Supreme Court. Hence I have had no opportunity to confer with the Washington counsel, and shall leave its chief management in their hands. Z. M.